

DEPARTMENT of HOUSING and COMMUNITY DEVELOPMENT

Initial Statement of Reasons (ISOR)

Proposed Adoption of

Title 25 Division 1 Chapter 6.5

Subchapter 2

Housing Element Annual Progress Reports Sections 6200, 6201, 6202, and 6203

I. INTRODUCTION

This Initial Statement of Reasons (ISOR) provides support for proposed regulations establishing the content of the form to be used by local governments to report progress in the implementation of the housing element of their general plans as required by Government Code §65400.

A. Background

Each city, county, and city and county ("local government") is required to prepare and adopt a general plan for its jurisdiction which includes certain mandatory elements, including a housing element. The housing element consists of: (a) an identification and analysis of existing and projected housing needs, including the local government's share of the regional housing need, (b) an inventory of resources and constraints relevant to meeting those needs; and (c) a program showing a five-year schedule of the actions to be taken to implement the housing element, including how the local government plans to meet its share of the regional housing need. (See Government Code Section 65583) Each local government is required to submit copies of draft and adopted housing elements to the Department of Housing and Community Development ("HCD"). HCD is required to review housing elements and prepare written findings regarding compliance with state housing element law. (See Government Code Section 65585)

Local governments also are required to annually report on the progress of implementation of their general plans. Local governments are required to submit copies of the progress report relating to the housing element to HCD and the Office of Planning and Research (OPR). (See Government Code Section 65400(b)(1)). Beginning in 1995, the Legislature required HCD to adopt forms

and definitions for local governments to use when preparing the housing element portion of the annual general plan progress report.

Until recently, HCD did not have the resources necessary to adopt regulations specifying the format for the housing element portion of the annual general plan report. In the absence of unifying regulations, these reports have been submitted in a wide variety of formats containing a wide variety of disparate information.

Based on this past experience, and in response to the statutory mandate to adopt forms and definitions, HCD prepared several preliminary draft tables for reporting housing element implementation progress. On July 15, 2005, these were mailed to 60 interested parties soliciting their comments. On July 28, 2005, the Department hosted a meeting at which 8 of the 60 interested parties were represented for a discussion on the draft tables and instructions. Subsequent to the meeting, comments were received from another 21 of the 60 interested parties. Based on these comments, the draft tables and instructions were revised and circulated to 8 interested parties for testing who subsequently provided their comments. On April 21, 2006, the Department published a Notice of Proposed Rulemaking in which any interested person, or his or her authorized representative, could submit comments relevant to the proposed regulatory action to the Department. This comment period began April 21, 2006 and lasted until June 5, 2006. In addition four workshops were held through out California to solicit further comments.

In considering the comments received during the public comment period, HCD determined that changes needed to be made in the proposed text that would necessitate a new 45-day comment period. These revised proposed regulations are based on the additional comments and suggestions received after publication of the April 21, 2006 Notice.

B. Current Law

Effective January 1, 2006, Government Code 65400 reads as follows:

§65400. After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

- (a) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.
- (b) Provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:
 - (1) The status of the plan and progress in its implementation.
 - (2) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance,

improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of forms and definitions adopted by the Department of Housing and Community Development pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2).

(3) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2 and the date of the last revision to the general plan.

(c) For the 2006 calendar year, the planning agency may provide the report required pursuant to subdivision (b) by October 1, 2006.

C. General Purpose of the Regulations

The purpose of these proposed regulations is to comply with the statutory mandate of subdivision (b) of Government Code Section 65400 to provide forms and definitions for the housing element portion of the annual general plan report.

II. DISCUSSION OF SPECIFIC SECTIONS

In the following section, the proposed regulations are set forth in gray shading and underlining with the explanation following.

A. § 6200 Purpose and Scope. These regulations implement and interpret subdivision (b) of Government Code Section 65400 which establishes the requirement that each city, county or city and county planning agency prepare an annual report on the status of the housing element of its general plan and progress in its implementation using forms and definitions adopted by the Department of Housing and Community Development.

§ 6200. Purpose and Scope. It is customary and useful to the reader to begin a body of regulations with a statement of their authority, purpose and the general activities which they regulate. Not to have a general introductory section would reduce the accessibility of the regulations and statutes to the user, and would have the benefit only of shortening the regulations by a fraction of a page.

B. § 6201.General.

(a) The reporting period for the housing element portion of the annual report required by subdivision (b) of Government Code Section 65400 shall be the calendar year immediately preceding the April 1 reporting deadline.

(b) The housing element portion of the annual report required by subdivision (b) of Government Code Section 65400 shall be prepared and submitted on a form made available by the Department and requesting the information required by Section 6202. The form shall contain instructions for its completion consistent with these regulations.

(c) These regulations and the form made available by the Department shall be subject to and governed by the definitions set forth in Section 6203.

(d) The information reported shall be for activities conducted within the jurisdictional boundaries of the reporting local government.

§ 6201. General. These regulations can be conveniently broken down into an introduction (Purpose and Scope), definitions, and the data and information to be gathered in the annual report. However, there are several other miscellaneous topics that also need to be covered by the regulations, and they have been grouped together in Section 6201.

Subsection (a). Subsection (b) of Government Code Section 65400 requires an “annual report” due by April 1 of each year, yet the statute doesn’t expressly establish the beginning and ending date of the reporting period. For example, one could interpret subsection (b) to mean that the report covers a 12 month period ending on March 31st. However, in HCD’s opinion, “annual” clearly means a period of 12 months, and generally is interpreted to mean the calendar year commencing on January 1st and concluding on December 31st. It is HCD’s opinion that the Legislature established the April 1 report deadline in order to give local governments time to prepare the report after the conclusion of the calendar year. The purpose of subsection (b) is to remove any potential ambiguity about the reporting period.

Subsection (b). There essentially are three approaches that an agency can take to utilize a form:

- (1) The form itself can be adopted as a regulation and printed in the California Code of Regulations;
- (2) The form can be printed separately, so long as it has a title and is dated (e.g., HPD-HE Form 1, March 3, 2006 ver.) which can be incorporated by reference in the regulations; or
- (3) The regulations can spell out the specific content of the information to be collected and the agency can determine the format of the information separately.

HCD generally considers approaches (1) and (2) as undesirable because the format for gathering the information is frozen in regulation and cannot be changed without a regulatory amendment. The ability to expeditiously change formats or even permit electronic submittals is helpful in responding to customer problems and suggestions. For this reason, HCD has chosen to specify the required content in regulation rather than adopting a specific form or format.

For example, at the July 28, 2005, interested party meeting, there was a discussion of using online or electronic reporting, whether the format should be in Excel or Word, and whether the information could or should be submitted on a CD ROM disc. If HCD were to adopt a specific form, it would be difficult and time consuming to change the format of the form to address customer problems and concerns. By adopting the specific content of the information to be reported

without specifying a format in regulations, HCD will be able to respond quickly to customer and HCD formatting needs including use of new technologies in electronic reporting, etc.

Nonetheless, HCD has prepared a sample form that will be circulated with these draft regulations and submitted to the Office of Administrative Law. The purpose of using a sample form is to help respondents visualize the format in which the information may be requested, and to solicit public comment on the proposed initial format.

Subsection (c). The purpose of this subsection is to make clear to the public that the terms used in any form will be governed by these regulations. This will ensure that regardless of format, the information being collected will be authorized by these regulations and that the format will not be used to create underground regulations.

Subsection (d). The purpose of this subsection is to make clear that only those activities conducted within the jurisdictional boundaries of the reporting local government should be reported on the annual report form.

C. § 6202. Definitions.

- (a) "Local government" means a city, county, or city and county.
- (b) "Income level" means the household income level for the category identified.
- (c) "Very low-income" means the same as defined in Health and Safety Code Section 50105.
- (d) "Low-income" or "lower-income" means the same as defined in Health and Safety Code Section 50079.5.
- (e) "Moderate-income" means the same as defined in Health and Safety Code Section 50093.
- (f) "Above moderate-income level" means the household income exceeds the moderate- income level.
- (g) "Permitted units" means units for which building permits for new housing construction have been issued by the local government during the reporting calendar year. For this purpose, "new housing unit" means housing units as defined by the Department of Finance for inclusion in the Department of Finance's annual "E-5 City/County Population and Housing Estimates" report.
- (h) "Second-Units" mean the same as defined in Government Code Section 65852.2(i)(4).
- (i) "Multifamily development" means a housing project or development of 5 or more units.
- (j) "Project" or "Development" refers to a housing related activity where new construction of a unit(s) has had a building permit issued during the reporting calendar year. This may include single family, mixed use, multifamily, second-unit, or any other developments where housing units as defined by the US Census Bureau and the California Department of Finance are a component of the project.
- (k) "RHNA" means the local government's share of the regional housing need allocation pursuant to Government Code Section 65584 et seq.

Government Code Section 65400 paragraph (b)(2) requires local governments to report on the progress of meeting their share of the regional housing needs determined pursuant to Section 65584. Paragraph (a)(1) of Section 65584 states that a local government's share of the regional housing need shall include that share of the housing need of persons at all income levels. For purposes of Section 65584, "household income levels" are to be determined pursuant to:

- Very low-incomes as defined by Health and Safety Code Section 50105.
- Lower-incomes as defined by Health and Safety Code Section 50079.5.
- Moderate-incomes as defined by Health and Safety Code Section 50093.
- Above moderate-incomes are those exceeding moderate-income level.

Since the purpose of the housing element reporting is to report on progress in meeting the local government's share of the regional housing need, it is necessary for the report to gather information covering the same income strata as required by statute for housing element purposes. For this reason, the definitions in proposed regulation section 6203, subsections c, d, e, and f, are the same definitions as are found in the statute governing regional housing needs allocations.

Subsection (b) of proposed Section 6203 requests information on both number of permits issued and number of "permitted units." A developer may be issued a single permit for an apartment project that has many units. For reporting purposes, both numbers are needed. To make reporting easier for local governments and to better ensure consistency in data collected, the definition of "Permitted units" mirrors the data collected by the Department of Finance for its annual reports on the state's growth in population and housing units. Subsections h, "second-units", i, "multifamily development", and j, "project" or "development" are definitions used to ensure consistency in data with reporting terminology.

The acronym "RHNA" is commonly used among planning professionals and is used in proposed regulation section 6202. To ensure that there is no misunderstanding of the acronym, it is spelled out in subsection (k).

D. § 6203. Annual Report Content. Each annual report shall contain the following information:

- (a) A cover sheet with the name and mailing address of the reporting local government, the name, phone, fax and email numbers for the contact person, and the calendar year of the reporting period.
- (b) The following data for assessing progress in meeting the local government's regional housing needs allocation ("RHNA"):
 - (1) Total allocation of housing units for the RHNA planning period and allocation by household income levels (i.e., very low, low, moderate, above moderate).

- (2) Number of permits for new residential units actually issued by the local government for each year of the RHNA planning period by household income level (i.e., very low, low, moderate, above moderate).
- (3) Total number of permitted units by household income level, total number of permitted units issued by year, the unfulfilled regional housing need allocation by household income level, and the total remaining unfulfilled RHNA.
- (c) For each housing development affordable to moderate or lower-income households including mixed-income multifamily projects for which building permits were issued during the reporting period, the following information:
 - (1) Identifying information for each project (e.g., address, intersection, or assessor's parcel number).
 - (2) Unit category (i.e., single family, 2-4 units, 5 or more units, second-unit, mobilehome).
 - (3) Tenure of the unit(s) (i.e., owner or renter).
 - (4) Total Number of units affordable to each of the following household income groups at initial occupancy: very low-income, low-income, moderate-income and above moderate-income when included in a mixed-income multifamily development.
 - (5) Monetary/financing programs used to achieve affordability (e.g., state, federal, or local financial assistance, and including tax credits and bond financing).
 - (6) Non-monetary programs used to achieve affordability and utilizing some form of deed restrictions or covenants running with the land (e.g., density bonus, inclusionary zoning).
 - (7) Any other methods used to achieve affordability at initial occupancy and including an explanation of how the affordability of the units was determined. For units that are affordable to lower or moderate-income households without direct governmental assistance, the report shall include the initial projected sales price or rent of the unit, and the maximum qualifying household income levels applicable at the time of initial sale or rent as determined pursuant to Health and Safety Code sections 50052.5(b) and 50053(b) and California Code of Regulations, Title 25, Division 1, Chapter 6.5, Sections 6918 and 6920
- (d) Report the total number of units affordable to above moderate-income households for which building permits were issued during the reporting period by unit category (i.e., single family, 2-4 units, 5 or more units, second-unit, mobilehome).
- (e) For each program identified in the housing element pursuant to the requirement of subdivision (c) of Government Code 65583, the following information:
 - (1) Name of the program.
 - (2) Objective of the program as set forth in the housing element.
 - (3) Deadline for achieving the objective as set forth in the housing element.
 - (4) Status of program implementation as of the end of the annual reporting period listing dates of specific milestones or accomplishments, and quantified to the extent applicable and possible (e.g., 25 acres rezoned to R-4 on June 1st).
- (f) Notwithstanding the foregoing, for a city or county which has issued permits for 1,500 or more multifamily units in the reporting period.
 - (1) The city or city and county is not required to report the information required by sections (c) on a project-by-project basis for projects of less than 25 units, but may report the information as summary data for the reporting period.
 - (2) Information related to affordability may be provided based on information other than building permit information. However, if the information is not based on building permits, the jurisdiction must provide an explanation as to how these units were determined to be assigned to the reporting period. Upon request by

the Department, the city or city and county shall provide back-up documentation for the information provided.

§ 6202. Annual Report Content.

With respect to the housing element portion of the annual report, subdivision (b) of Government Code Section 65400 requires that by April 1 of each year the local planning agency provide an annual report to the local government's legislative body, OPR and HCD that includes the following information:

- The "status of the plan and progress in its implementation;"
- The "progress in meeting its share of regional housing needs determined pursuant to Government Code Section 65584;" and
- Local efforts to "remove governmental constraints to the maintenance, improvement and development of housing pursuant to Government Code Section 65583(c)(3)."

This information is to be "prepared through the use of forms and definitions adopted by" HCD.

The purpose of this proposed Section 6202 is to implement and interpret these reporting requirements. This section is divided into six subsections: (a) cover sheet; (b) information on progress towards meeting the local government's share of the regional housing need; (c) information on housing units permitted during the planning period affordable to moderate- and lower-income households; (d) information on housing units permitted during the reporting period affordable to above moderate-income households; (e) information on the local government's progress in the implementation of the programs identified in its housing element; and (f) reporting options for jurisdictions who issue more than 1,500 multifamily permits during the reporting period.

Subsection (a). For any report it is customary and necessary to collect the name of the submitting entity, contact person and contact information in case HCD has any questions regarding the information. In order to properly evaluate the information, it also is necessary to know the reporting period for which the information is submitted.

Subsection (b). The prefatory language establishes that the information in the paragraphs that follow is required to be submitted. More substantively, the prefatory language establishes which units are to be included in the data submitted – only those for which a building permit was issued during the planning period. This was a topic of discussion with the interested parties. Some parties advocated for use of a "certificate of occupancy" rather than a building permit because a certificate of occupancy was better evidence that a unit actually was built and ready for occupancy. However, from these discussions, and further research, it was determined that not all local governments consistently issue certificates of occupancy for all residential buildings, particularly single family

dwelling. For this reason, HCD has selected building permits issued as the more consistent and appropriate method of reporting construction activity. Government Code Section 65400 (b)(2) states that a local government is to report on the progress of “meeting its share of regional housing needs determined pursuant to Section 65584.” Section 65584 sets forth a process whereby HCD, in consultation with each council of governments (“COG”), determines each region’s existing and projected housing needs. Each COG, or HCD if there is no COG, then adopts a final regional housing needs plan that allocates a share of the regional housing need to each city, county, or city and county. The share represents the number of additional housing units for households at all income levels the local government is to plan for during the allocation period. For purposes of Section 65584, income levels are defined as follows:

- Very low-income, as defined by Health and Safety Code Section 50105
- Lower-income, as defined by Health and Safety Code Section 50079.5
- Moderate-income, as defined by Health and Safety Code Section 50093
- Above moderate-income

Paragraph (b)(1) - Consistent with the requirement to assess progress in meeting the local government’s regional housing need, paragraph (b)(1) asks for the local government’s regional housing need allocation, both as a total number of households, and by income level. This information will have been provided to the local government either by a COG, or HCD in the absence of a COG.

Paragraph (b)(2) - This paragraph asks the local government to report the total number of permitted units issued by year and by income group. Based on meetings with the interested parties, local governments typically keep track of building permits issued by calendar year. Permits are issued for single or multifamily dwelling units at various densities of development. For units developed with subsidies and financial assistance or other state or local programs imposing rent or resale restrictions, establishing the affordability of the units will be dictated by the subsidy or program. Subsection (c) requests information on affordable units developed without direct government assistance, and this information can then be summarized for purposes of providing the information requested in Paragraph (b)(2).

Paragraph (b)(3) - This paragraph will require local governments to make an arithmetic calculation of the difference between the total regional housing needs allocation and the total permits issued, thereby determining whether or not the regional housing need has been met at all income levels and for the total allocation.

The information collected pursuant to subsection (b) is for the regional housing needs allocation period, which covers a period from approximately

two and a half years prior to the statutory due date for the housing element, until the subsequent statutory update of the housing element. This period varies from COG region to COG region due to various statutory allowances or extensions that have been granted over time. For some regions this period may be as short as seven and a half years and for other regions it may be closer to 9 years.

Subsection (c) – As noted above, in HCD’s experience, production of housing that is affordable to very low- or lower-income households requires governmental subsidies. The information requested in subsection (c) is designed to assist local governments to identify progress in addressing the housing needs of these income segments.

Paragraph (c)(1) is necessary to identify the specific project for which the information is being reported.

Paragraphs (c)(2) Government Code Section 65584(d)(1) provides that an objective of the regional housing needs allocation plan is to increase the housing supply and the “mix of housing types, tenure and affordability.” Paragraph (c)(2) requests information on housing type in terms of unit type. The unit categories identified (single family, 2-4 units, 5 or more units, manufactured homes and second-units) are typical housing types identified in local plans and for which building or installation permits are issued. Comments received during the April to May, 2006 comment period voiced concern regarding the reporting of second-units. However, according to Government Code Section 65583.1, a jurisdiction may identify sites for second-units as part of demonstrating adequate sites, based on the number of second-units developed in the prior housing element planning period. Therefore, the Department has found that reporting on second-units as a unit type is a valuable tool in demonstrating compliance with second-unit and housing element statutes. This information provides another indicator of the efforts being made by the local government to foster production of housing affordable to all income groups and to provide a mix of housing types and tenure.

Paragraph (c)(3) is directly related to the statute in that it requests information on “tenure” (i.e., whether units reported are owned or rented).

Paragraph (c)(4) requests information on the affordability of units by income group in order to conform to the statutory income criteria and to permit local governments to take credit for units produced to meet the needs of these income groups. Information under subsection (c) for housing affordable to above moderate-income households is only required where those permitted units are part of a mixed-income multifamily project. This information is required because under most permitting processes, it would be difficult to segregate the reporting of permitted units affordable to above moderate-

income units as required by Subsections (c) and (d) of these regulations in a mixed-income project from other units within the project.

Paragraphs (c)(5), (6), and (7) request information of how the local government determined that units are in fact affordable to the various income groups. In order to assure an acceptable level of accuracy, it is necessary that local governments make some effort to identify the actual mechanisms used to achieve affordability. Local governments use a variety of mechanisms, but generally, these can be broken into two categories – direct monetary assistance (e.g., loans and grants) and use of governmental powers (e.g., inclusionary zoning and density bonuses). Federal and state tax credits are included as direct monetary assistance because they result in a cash infusion to the project, even though the funds come from private investors rather than a governmental entity. Regulatory agreements or deed restrictions are generally used to enforce the occupancy restrictions by income for both types of assistance, and are therefore a basis for reporting. Finally, paragraph (c)(7) provides a catch-all to report any other units that a local government can establish are affordable through other mechanisms. The local government is required to describe how it has ascertained that such units to be affordable. Affordability for such units should be established using the affordable housing cost formula pursuant to Health and Safety Code sections 50052.5(b) and 50053(b) and California Code of Regulations, Title 25, Division 1, Chapter 6.5, Sections 6918 and 6920.

Subsection (d) - Requires local governments to report on information not previously reported on in Subsection (c), specifically for units affordable to above moderate-income households. Because the Department recognizes concerns with the inability of some jurisdictions to collect the data needed to report on above moderate-income units under Subsection (c), the regulations only require jurisdictions to provide summary data on permitted units within this income category by unit type.

Subsection (e) – Subdivision (b)(1) of Government Code Section 65400 requires localities to report on progress in implementing their housing elements. Government Code Section 65583 specifies the content of a housing element. Subdivision (c) specifically requires a program with a five-year schedule of actions the local government is undertaking to implement the policies and achieve the goals and objectives of the housing element. Subdivision (e) requests information on the name of each program in the housing element, the objective it is intended to address, deadline for accomplishment set forth in the housing element, and current status of implementation. Subsection (e) of Section 6203 provides guidance on how to report this information. Annual reporting on programs that housing element compliance was contingent upon or where the jurisdiction has identified a program to re-zone sites is critical to ensure housing element statutory compliance.

Subsection (f) - The Department recognizes that large cities and counties that issue permits for a high volume of units, including those affordable to lower and moderate-income households, will have difficulty tracking and reporting permits and units to the level of detail necessary to comply with Section 6203 (c) of the regulations.

Paragraph (f)(1) The proposed regulations allow jurisdictions issuing permits for 1,500 or more units per reporting year to aggregate reporting for units within developments of 25 units or less. The Department's experience has found that the majority of new housing units in high volume jurisdictions affordable to lower and moderate-income households are in multifamily developments. Therefore, the Department determined that using multifamily housing units as a threshold criteria for the reporting of information on units in these income categories is an appropriate nexus between the reporting requirements of Section 6203 (c) and the limitations in high-permitting jurisdictions. The 1,500 permitted unit threshold was determined as being the most representative of the typical permitting levels of those jurisdictions that consistently experience high volume of production of housing affordable to lower and moderate-income households.

Paragraph (f)(2) – As stated above, high producing jurisdictions have difficulty tracking and reporting permits and units to the level of detail necessary to comply with Section 6203 (c) of the regulations. This is especially evident when correlating building permit data with affordability in small projects. These jurisdictions track this type affordability data using other methods such as financing data. The Department feels that by using alternative methods to capture affordability data it ensures higher accuracy in the reporting of data. However, to ensure consistency in reporting, the jurisdiction must provide an explanation of the method used and be able to provide supporting documentation upon the Department's request.